

A THIRD  
REPRESENTATION  
OF THE

CASE  
OF THE  
HOSPITALER

OF  
S<sup>T</sup> THOMAS

WHEREIN  
The Point of Law is Argued and Discussed;

Humbly Addressed

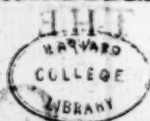
To the Right Worshipful the PRESIDENT, and  
the Court of the GOVERNOURS, at their next  
General Meeting.

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—Necdum finitus Orestes.

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J. Huntington  
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4 Mar. 1904.

ΕΑΝΤΗΣ apud Epictetum  
in Enchiridio.

Ἄγε δὲ μὲν ὦ Ζεῦ, ἔστω, ἢ πεπονημένον,  
Ὅσον ποθ' ὑμῖν εἴμε ἀγαπῶμεθα  
ἡμεῖς ἡμεῖς γ' ἀκούμεθα, ἡμῶς μὲν δὲ λω',  
ἡμῶς δὲ ἀκούμεθα, ἡμῶς δὲ λω'.

*Idem ex Versione Senecæ, Epist. 107.*

Duc me parens celsique dominator poli,  
Quocunque placuit, nulla parendi mora est.  
Assum impiger, fac nolle, comitabor gemens,  
Malusque patiar, quod pati licuit bono.

A THIRD  
 REPRESENTATION  
 OF THE  
 CASE  
 OF THE  
 Hospitaler of St. *THOMAS*, &c.

**T**HE true decifion of the Controverfie depending betwixt Mr. *Hughes* and Mr. *Turner*, is very plain and eafie to any man that will confider it upon right Principles.

For all the question is, Whether the Kings and Queens of *England* for the time being, are the Supreme Vifitors and Difpofers of this Houfe and its Affairs and Officers or no; for upon fuppoftion that they are, what the King doth by his Commiffioners acting by his Authority, and not exceeding the Powers committed to them, he doth by himfelf, and if there be no appeal from the King, if he be invefted with a legal Power, to vifit this Houfe whenever there is occafion, or whenever he thinks or judgeth that there is, without appeal, (which cannot be admitted without fuppofting a fuperior Judge) then there can be no appeal from the Commiffioners neither, tho they fhould exceed the Powers committed to them, but only to the King, becaufe they are immediatly conftituted and authorized by him, who is the fupreme, and therefore cannot be fubject to any inferior Jurifdiction or Authority whatfoever.

That the King hath actually such a legal Power of visiting and inspecting the management of this House, appears first by its being a Royal Foundation, endowed and constituted by *Edward* the Sixth.

And secondly by the express reserve in the Charter or Instrument by which this Royal Charity was consigned and conveyed, in which there is an appeal reserved, and a power of Visitation granted to the Kings and Queens of *England* for ever.

Thirdly, the same thing appears from the nature of the Charity, which was for the relief of their Majesties poor Subjects, and more especially of those who are sick or wounded in their particular ~~service~~, and in the defence and maintenance of their Country, and the deceasing King; or otherwise resigning or relinquishing his Government, doth with his Crown and Scepter, with his Imperial Diadem, his Prerogatives and Territories, his Throne of Majesty, and his Royal Robes, transmit the Cares that were lately incumbent upon himself: So that every new Royal Hospital that is founded for the good in general of the infirm and sick, and more particularly of those that are so in their Majesties and their Countries service, becomes a new part of the Regal Administration and his Dominion, the most easie and natural, the most charming and delightful part of it, is in some sense enlarged by every such new Foundation. But there is nothing certainly more contrary to Sense, or more abhorrent from Nature, than to suppose a King sitting with his hands tied under his irksome Canopy of State, and looking like an unconcern'd, or which is still worse, an impotent Spectator, while the Charity of his Royal Predecessors is either abused to ill purposes, or managed by Persons that are unfit for their charge, or undeserving of the same: And if this be so absurd, so monstrous, so very irrational and strange a thing, then is it that sort of demonstration which the Schools call *per absurdum*, it is an impossibility in Politiques, whatever it be in Nature, a thing that can never be supposed on the one hand, or granted on the other, that the present King or Queen should not always be intrusted with a power of Visitation in case of such abuses, or in case they are of opinion that any such are committed, in all the respective Charities and Endowments of their Royal and glorious Predecessors, the fragrant and sweet Odor of whose happy Memory, ought not to be choked or stifled; or corrupted, by the imbezeling or abusing of their Princely goodness, through any legal impotence or disability in those that  
succeed

succeed to their Imperial Fortune, either to prevent or remedy so great a Mischief.

That the King should found an Hospital, and take no immediate care of it when he hath done, especially when Abuses creep into the Constitution, and begin to make Flaws and Cracks in the building he hath erected, is a Piety plainly inconsistent with it self, and it would be still more strange, that he that had been at the charge, care, and contrivance of the Foundation, that had endowed it, ordered it, settled and established it upon a Rule and Platform not to be transgressed, not to be changed or altered in any wise or manner whatsoever; and that had taken care, during his own Life or Reign, that all those Measures should be exactly observed, that were for the good and reputation, and promoted the design of this his Christian Munificence and Bounty, should after his decease put it out of the power of his Successors for ever to enquire any longer into the management of the trust, let it be never so much neglected or abused; because this would imply a negligence so much greater in him, and so much more inconsistent with his own declared design in erecting and contriving an establishment of this nature, as all after Ages are in proportion bigger and longer than the present, to the last end of the World. A tacit consent in this Case would be sufficient, nay, an express prohibition would be of no avail, because there is a plain trust lodged in the nature of the thing, and the supreme Power is bound by virtue of its publick intention for the common good, to see that all publick Trusts be not abused, and when they are abused, that is the Judge, because otherwise it cannot exercise it self; only if the Prince in a mixt Monarchy, and in the intervals of Parliament, doth any thing by himself or his Commissioners, to the injury of his Subjects, there lies a natural Appeal to that Assembly, or to that part of it which is the supreme Judicature, and the last resort for the obtaining of right; and if Mr. *Hughes* pleaseth to carry his Business thither, Mr. *Turner* will not fail to tread upon his Heels, and follow him thither in a succeeding Track, tho for treading in his steps he desires to be excused. A Royal Endowment doth naturally imply a Royal and equally Majestick Visitation.

But besides what it is in Argument, it is true in Fact, that the Kings and Queens of *England* for the time being have visited and inspected the Affairs and Officers of this House, as often as there was occasion. As for the two last Reigns, I know it will be urged, that the Regulations that were made depended upon the avoidance  
of



of the Charter, and that the one was illegal as well as the other, the former being only in consequence of the latter : But what then will these Objectors say to the present? Have their present Majesties no power, notwithstanding the restitution of the City Charter, to dispose of the Revenues of the Hospital as they please, supposing they be still laid out upon charitable uses, for the relief and succour of the sick and wounded? What then is the meaning of their Majesties late gracious and encouraging Declaration, for the reserving one Moyety of their Hospitals during this present War, for the use of such as shall fall sick or be wounded in the service? Why did the Privy Council order this Declaration to be printed? Were the King and they too both out in their Law? Could not He or they that have ordained one Moyety to be reserved for those that suffer in their service, appropriate the whole, if occasion should require? How can they dispose of one half without a prudential or occasional Propriety? And how came they to have a Propriety to one half more than to the other? If they have no Propriety in such a House as this, they can no more send Sea-men or Soldiers to this Hospital for cure, than they can quarter them in private Houses, and that without any satisfaction to the Masters of them, as well as without their consent, or than they can raise a Tax without the content of their People, notwithstanding an Act of Parliament in the one case, and the perpetual practice of the common Law for time immemorial in the other? But if they have a Propriety, a legal Right, a successive Jurisdiction from their Royal Predecessors, who shall hinder them from doing what they please with their own? or disposing of their Domestiques in their own House, just as they please themselves? Is it not ridiculous to say they may dispose of the main body of the Revenue, which is perpetually spent upon the sick and poor, but not of the Officers belonging to them, and of that part of the Revenue which belongs to their service? That they may dispose of Masters, but not of their Servants; for we are indeed no other than Servants to the Poor, tho we may call our selves or take upon our selves like Masters, we are in the nature of Instruments that are for the sake of others, and not for themselves; and if they for whose sakes we are what we are, are at the Kings disposal, then certainly we are much more; for Instruments are valued by their fitness to their end, and they that are entrusted with the end it self, are much more supposed to be judges of all those means by which that end may most effectually be

be accomplished. Shall he that owns an Estate, not choose his Steward? Shall he that keeps an House, be denied the choice of his own Chaplain, duly qualified according to the Laws of his Country, notwithstanding he may if he please, and for as long as he so please, entrust the exercise and administration of this Power in some subordinate hand? If these things be true, as certainly they are, let Mr. *Turner's* Adversaries shew, if they can, by any thing that looks like sense, that they do not extend to his Case, and he will immediately surrender up all his pretensions, or else, *dentibus vipereis limam rodunt*, they gnaw a File that will be too hard for their teeth, and had better hold their peace, than bark at the Moon to no purpose, for the Moon will still shine and go on in its course, when they have tired their Lungs with barking at it. But what do I speak of Moons, when the Sun himself is up, when the light of truth is in its Zenith, riding in a Chariot of meridian Flames, and all must own its brightness, but they that shut their eyes, and cannot encounter the piercing of its beams without being dazzled and blinded, who call light darkness, and mis-call darkness light, and have no sense of the difference and distinction betwixt the one and the other.

Mr. *Turner*, tho his own Property be concerned in this Affair, yet against so great opposition as he hath met with, he had not appeared so obstinate in the defence of it, but that the Parish of *S. Thomas* it self, being in the same Gift, and enjoyed by him upon no other Title than the Hospital, he knew not how far such Orders might extend, and he saw but too plainly that with equal reason they might eject him out of all, so that it was *proximus Ucalegon* all over, and the Rector of *S. Thomas* could not stand by like a party unconcerned, when the Hospitaler was in so much danger.

He hopes after all the Clamors that have been raised against him for his Contempt and Disobedience to the Court of Aldermen, to whom he has not been wanting to pay all due and reasonable respect, that he shall be easily excused from any such imputation, by all indifferent Persons who shall consider, that the Court of Aldermen is no Court of Judicature, and that this is a matter of Right, in which case there would have lain an Appeal, without any thing of Contempt, or any suspicion of it, in all inferior Courts of Judicature themselves; where is the Contempt, when he stands only by the Kings Prerogative? and when their Majesties and the Privy Council are so plainly on his side, when without reflecting

reflecting on his particular Case, unworthy to great a cognizance as that is; they have made the one a positive Declaration, and both of them together in express Order that involves it.

He is humbly of opinion, that his Possession being legal in its root, and not to be disturbed by any Power inferior or subordinate to that which gave it, without an express Leave or Appointment of the Supreme; and having ensured his fidelity to their present Majesties, by taking the Oaths required by the late Act of Parliament made in that behalf, that he hath the assurance of their Majesties gracious protection, who have promised to maintain the Church of *England*, and every individual Member of it in all their legal Possessions, and that he hath further the confirmation of the Parliament itself, who by appointing and prescribing a Condition upon which all legal Ecclesiastical Possessions shall be securely enjoyed, and not otherwise, are supposed upon the performance of the Condition prescribed, to confirm the Possession to the present legal Incumbent, and such is he till he be legally ejected, or till any body be so hardy to undertake to prove the contrary, and so successful to do it. And I do hereby challenge all the Council that the Chamber of *London* can retain, to prove that Mr. *Hughes* hath any shadow of a Title, or that Mr. *Turner's* Possession is not strictly legal.

The Place is immediately in their Majesties disposal; and besides that, Mr. *Hughes* by being appointed by an inferior Power, is not sufficiently authorized for what he pretends to; besides that, he is for ever incapacitated and disabled, by not taking the Test, as he should have done. Mr. *Turner* humbly hopes that he is every whit as able and fit to serve the King and Queen in this or any other Station as his Competitor Mr. *Hughes*, though he were another sort of Man in many respects than really he is.

As to Mr. *Hughes* his particular merit to the Royal Family, it is too well known to need many words to express it; and because Mr. *Turner* is accused by some that want something to find fault with, of Disingenuity and Malice, in representing Truth, tho he was forced to it in his own defence, to let the World see that the Man and his Title were both of them alike, both equally rotten and vicious at the bottom, and that it was at least a mistaken and a sinful Charity to support him any longer, either in respect to his Person or his Cause; yet as to what relates to his Sermon preached at *Abingdon*, if it be thought too



invidious to reflect upon it, he desires it may be considered by such Censurers as these, that nothing was more essential to his Argument than that was, nor any thing that could less be spared or omitted, by a Man that would defend himself as he ought to do against him; for notwithstanding the Regulation that had been made in this House, in the Reign of K. *Charles II.* yet upon the Solicitations that were made in behalf of Mr. *Hughes*, it is well known to all that are not unacquainted with the History of that Affair, that he had certainly been restored again, had it not been that this very Sermon was put into the hands of one of the then Principal Secretaries of State, and by him a Representation made of it to the King himself; after which His Majesty and those that were then in power, were deaf to all Entreaties and Solicitations in his behalf; so that this being the very reason of his ejection from his Place, the very and the only motive that turned the Scale against him, when all other Considerations were either forgotten, or forgiven, or neglected: I offer it to any Man of common sense to consider, whether a greater Affront could possibly be offered to the memory of that excellent Person and beloved Prince, whose Death was so universally lamented, that no Age, no History can afford a parallel of so epidemical, so sympathetique, so strange and wonderful a Grief, a Grief that smote every breast with horror and surprize, that made all Faces pale, all Knees to shake, that tapped, like *Moses*, even the Rocks themselves, and made the most hard and unrelenting weep, than to rescind his legal Act, or at least to pretend to do it, by one that neither is nor can be so, and an Act that was done not only by him that had full power and authority for what he did, but also upon so just, so great, so personal and so sacred a resentment? Have we forgot those Tears, and the respect that is due to the Ashes of a Prince whose life was so inestimably precious in our sight? Or do we disallow the reason upon which he went in this particular Action? Do we condemn the Piety and the Duty that forced his gentle nature to a very gentle, but yet unwilling severity upon so great an Offender, whom tho he had forgiven by an Act of Grace, yet without some testimonies of Repentance, some retaliation of Service for the Fault he had committed, he thought it a sin to encourage and reward, or to let him eat, like *Mephiboshes*, at the Kings Table, and be fed with the Bread of those Princes whom he had,

like *Shimei*, cursed, and like some proud and haughty *Philistine*, had defied? In a word, do we pretend to justify those Principles which he once espoused, those Practices which he publicly defended? How can we else go about to restore him to a Service which he lost to his advantage, and out of which he was ejected for no reason but this, the greatest and the worst of provocations, by him that could have done it legally and unaccountably for no reason at all? Or is it not rather certain, that those worthy Gentlemen, whose charity and good nature hath inclined them to restore him, were unacquainted with the true State and History of his ejection, which was done out of a principle of natural affection to a Prince and Father, and for a Cause in which all the Royal Family are equally concerned? However, Mr. *Turner* is certainly excusable for urging this against him, because he is the Person struck at by Mr. *Hughes*, and all Weapons are lawful to him that is unjustly assaulted; and he is still the more excusable, because he had no hand, nor so much as the tip of either of his little fingers in the management of that fatal Accusation against him; nay, he really knew nothing either of him or his Sermon, and now he would have spared him the repetition of that Crime, as he would have done formerly of several others, if an hard necessity had not forced him to do things contrary to his nature; and if sparing of him, who seeks his ruin so contrary to all sense and justice, had not been injustice and cruelty to himself: But yet he doth not urge this as matter of Law, the Law will defend him upon another bottom, because he was put into this station by one King and confirmed by another, whose Power was paramount to that which Mr. *Hughes* hath recourse to, and who had a legally arbitrary and unaccountable disposal vested in themselves, of the Affairs and Officers of this House; and if neither they nor the Law, which is nothing else but common right and justice, are able to defend him, then his Case is worse than that of the Rulers of *Jezreel* with respect to *Jehu*; for how shall he be able to defend himself against a Power which neither two Kings nor the Law it self have been able to withstand?

To conclude, whatever becomes of the Place for the future, the Arrears for the time past and so much longer, as till he be ejected by a competent Authority, are unquestionably his, and it is plain injustice, to give in the mildest terms, to keep them from him; and Mr. *Hughes*, who neither can nor dare put Pen to Pa-

per to assert his Title, is neither more nor less than a Robber for receiving them: Mr. *Turner* therefore begs and entreats of the Court of Governours at their next general meeting, that they would consider and redress the injustice that is done him, without putting him to the trouble and formality of bringing an Action against a litigious Fellow, or those that have paid him what they cannot answer.

Mr. *Turner* is willing to submit his whole Cause to be argued by Council on both sides before the Court of Aldermen, or before the Governors at their next general meeting, or to refer it to my Lords the Bishops as many of them as are now in Town, or to any five of them whom Mr. *Hughes* shall choose, or to the House of Commons, who are the Guardians of the Liberties of the People, or to the House of Lords, who are the supreme Judicature of the Nation; and he would add also to the King and Queen themselves, but that they are indeed Parties, their Royal Prerogative being interested in it; or to the Privy Council, but that they have already determined in his favour; and in one word, he submits it to all Mankind, and to his Enemies themselves, if they will speak their Consciences, as they will answer it at the day of Judgment, always provided, that they expect and believe there is such a day a coming, whether Mr. *Hughes* or he be in the right, or which hath the juster and the plainer Title of the two to the Place of Hospitaller of *S. Thomas Southwark*, or whether a more baffled and shamefully defeated Cause than Mr. *Hughes's* is, were ever known or heard of in any Story.

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F I N I S.